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THE CHANGING CONCEPTION OF PROPERTY.

HARRY ALLEN OVERSTREET.

THERE are few social concepts more deeply in need of critical analysis at the present time than the concept of Property. This is true for two reasons. In the first place, the concept has long since, like coin of the realm, become accepted at its face value. The ordinary person has no more understanding of the intricate social, psychological and ethical relations involved in the concept than he has of the subtle connection between a gold standard and market supplies which is expressed by the fluctuating value of a silver dollar. Property is property. Everyone knows what the word means and so passes it on without question. In the second place, the conditions of the new social economy make it increasingly clear that the concept of property is undergoing more or less radical, though in large measure unnoticed changes. Much of the confusion in our contemporary economic and legal thought is due to the fact that we still give conscious adherence to the traditional meanings of property while, in our unconscious practice, we have already passed beyond those meanings. The essential need, therefore, with regard to this fundamental concept is clarification of thought. It will doubtless not be deemed superfluous then, if, in the following pages, we attempt a careful analysis of this crucial, much used and much abused concept.

I.

In a primary sense, as Aristotle showed, property is a need. The possibility of a planful existence depends upon the power to control certain factors in the external order. If, for example, a man is to hunt successfully, he must at least be secure against the taking from him by any chance comer of his arrow or gun. His weapon must be "his"

for relatively permanent control. Where there is no property in this sense, life is apparently reduced to a bare immediacy of fleeting controls, the life of the very low animal.

There will be no quarrel with such a view. Even the communisms have seen fit to provide for relatively extended, in some cases even permanent controls of external factors. A tool, a garment, a dwelling house, a plot of ground, is an extension of personality. Each of these, if it is to be a fruitful extension, must be organized in a way that gathers up and holds past powers in the service of future possibilities.

Difference of opinion arises only when a right of control justified on the ground of extension of personality and fruitful use is enlarged into a right of control irrespective of relation to personality or use. Property in the fullest sense is a right of control without specification as to manner of use. What makes a thing property is that it is one's *own*. One may smash it or burn it; one may put it away or use it as one sees fit. It is nobody's business but one's own what one does with one's own. If we seek a justification for this type of unrestricted control, we have it in the thought that in as far as a man puts his labor into a thing, he makes it part of himself. As he has a right to the disposal of himself, so he has a like right with regard to the things which through his labor he incorporates into himself.

In this conception of incorporating, through one's labor, parts of the external world into one's self, we have one of the two root ideas of property. In modern days this idea would be expressed by saying that a man has a fundamental right to what he "earns." Since he has put himself into his work, he has made the product part of himself; and it is against nature for a man to be alienated from himself. Hence his right to his property is in fact an inalienable right. Alienation would mean robbery, the sundering of life from itself. Hence he who takes away property is in a sense a destroyer of the sacred unity of life.

If we were discussing conditions in a primitive society

there would be little occasion to find cause for quarrel with such a conception of property. The savage tears off a limb of the tree and with laborious patience fashions it into a bow. He has undoubtedly "earned" the product. In all propriety it "belongs" to him. As soon, however, as we pass from primitive society, difficulties disclose themselves; until in the present order of things it becomes less and less possible to state with any approach to accuracy what a man has "earned." If we content ourselves with identifying "what he has earned" with what he has actually been enabled, by one legal means or another, to *possess*, the error of such identification is obvious. But herein lies precisely the crucial difficulty of our modern attitude toward property. Property is what a man *legally possesses*. But a man may legally possess what he has in nowise *earned*.

Hence a dilemma. Either unearned property, because it is unearned, is unjustified and should be subject to summary confiscation; or there is another principle in terms of which the legal, if not indeed the moral, right to property is justified. The principle in question does undoubtedly exist and that by reason of a very perplexing fact in our economic life. As we well know, there are certain gross forms of unearned wealth—overt theft, for example—which society has long since made legally reprehensible. The majority of us are innocent of the possession of such forms of unearned wealth. On the other hand, there is scarcely a person who accumulates wealth beyond the subsistence needs who is not guilty (if guilt be here the proper word) of the possession of subtle, scarce-detectable forms of unearned wealth. The story of modern economics is the story of "rent," that is, of unearned surplus due to scarcity conditions of one kind or another. If the honest citizen, in short, crying out against the more obvious forms of unearned wealth, examines his own income, he will find traces here and there of wealth that has flowed in by reason of some peculiar natural advantage or other—location or ability; wealth that he has not fully "earned." It is

so with most incomes. The factor of unearned surplus in brief weaves subtle and intricate threads through the whole of the social fabric. These baleful threads can be detected and removed only with a subtlety and intricacy matching their own. This, obviously, is to be accomplished, not by isolated individual attacks upon individual "unearned" possessions, but by the infinitely careful and complex application of social and economic devices adequate to the task.

We come then to a deep reaching social principle. The possessions that have been legalized into property, have apparently been legalized not by reason of any inherent sacredness in the mere act or fact of possession. The legalizing at the best has rather been a matter of social expediency. So subtle and devious are the ways of unearned surplus that society has as yet not been able to invent means for their complete detection and elimination. To have granted the right of detection and elimination to individuals would have been to let loose forces of antagonism and hatred that would have disrupted society. There has, then, been but one alternative for society; until the social mind can itself organize measures for the detection and elimination of unearned surplus, all actual possession that is not grossly and overtly theft, must perforce, for the sake of social peace, be sealed with legal approval. The alternative, apparently, is not a counsel of perfection; it is at best a counsel of social expediency.

In view of this principle, then, the ordinary "legal" right of possession holds only in so far as society has not yet discovered means of successfully discriminating between earned and unearned possession. Actual possession, therefore, instead of being "sacred," a "vested right" grounded in the eternal order of things, is but a temporary tenure subject to revocation or modification at the moment when the social insight shall have reached the point of satisfactorily discriminating between property earned and unearned.¹

¹ In view of these considerations, note how inept is the statement of Monsignor Parkinson, made at the recent Roman Catholic Congress in England

II.

From the point of view above taken, then, there are apparently three reasons for justifying private property. First, private property of some sort is necessary as an instrument of personality; second, private property is justified in so far as it is earned; third, private property is justified, whether earned or not, in so far as society, for reasons of expediency, has placed upon it a legal approval. Obviously, the two last are derivatives of the first and subordinate to it. If the holding of unrestricted control were everywhere of evil import for a man's life, even the "mixing of his labor" would not long justify his retention of such control. Again, if the legalizing of unearned possession were obviously disastrous to social health it would not long be tolerated. It is because, in the absence of secure economic devices, the legalizing of such "unearned" possessions is apparently less full of dangers to the social welfare than the exposure of them to individual assaults that such legalizing has been justified. In short, the present property system, bad as it is, has seemed to serve in some measure the interests of personality.

We turn then to what is in essence the deepest of all the justifications of property, the fact that property serves as a fundamental and indispensable instrument of personality. I pass over the contrasted view which holds that the entire property system is due to the avarice of men (God having created the world for common enjoyment). Such a view would of course deny that private property is an instrument essential to the welfare of personality. I pass it over for the reason that a theory completely communistic has no serious importance for modern discussion. The point of view is well-nigh universal to-day that some manner of permanent, exclusive control of external factors is necessary to the organization and effective execution of

(reported in *Current Opinion* for October): "Private property with us is an immutable right, and not merely a right of some vague kind, but a personal and a natural right."

individual life. If now this point of view is justified, the important corollary follows *that wherever property serves as an instrument to suppress or injure personality it loses its fundamental justification and has no inherent right to exist.*

If the principle above stated and its corollary are accepted, it follows that the chief function of a social order is to discover and correct all those conditions under which property tends to go counter to the welfare of personality. Society, to be sure, has two questions to ask about property. The first question is, how much of what is legally possessed is earned and how much unearned. This is a question as to the intrinsic right to possess. The second question is, earned or unearned, in how far does the possession of this or that property advance or hinder personality. This is a question as to the personal and social effects of property. Obviously, while society must wait long before it is able to say with exactitude how much of property is *intrinsically deserved*, it is even now able without great difficulty to estimate the effects upon personal and social welfare of certain types and conditions of property ownership. It is therefore along this second line that social action regarding property is in the main to be taken.

The conditions of ownership which bear upon personal and social welfare may be summed under two heads: (1) The condition in which property is in excess of needs; (2) The condition in which property is below the level of needs;— property in excess and property in defect.

III.

1. Property in excess. Property in excess assumes the three forms of property for use—property employed for personal or family consumption; property for control—property employed in one way or another for the prosecution of business enterprise;¹ and property for benevolence.

As to the first, all property for use which is in excess of

¹ Hobhouse, L. T.: *The Historical Evolution of Property, in Fact and Idea*; p. 9; in the volume, *Property: its Duties and Rights*; Macmillan and Company, 1913.

fundamental needs (food, clothes, shelter, education, healthful recreation, social intercourse, culture) is *ipso facto* anti-personal and anti-social. It goes without saying that a man with an income beyond needs, who spends this income for luxuries or vices, injures himself in health and character. But the injury goes farther. In one sense, to be sure, all expenditure for luxuries or vices is a stimulus to production and so is apparently of economic value. But it is not difficult to show that the stimulus is an unhealthy one; that a far more effective and fruitful stimulus is thereby made impossible. As economists have long since shown, could the increment beyond needs be added to the income of workers all along the line, an increased demand would thereby be stimulated for the kinds of goods which make for solid efficiency and productive health. Surplus income, in diverting wealth from the channels of healthy demand, is therefore essentially anti-social.

It becomes consequently the business of a sound social economy to devise measures for the elimination, eventually if not immediately, of such unfruitful surplus for use. In view of this obligation the device of a tax progressively graduated to meet increasing income is wholly justified. Specifically, such a tax has the double justification (1) that as incomes increase the proportion of wealth that is probably unearned increases; but (2) it is justified still more fundamentally by the fact just stated that a surplus of property for use is, by reason of the misdirection of productive stimulus, anti-social, and therefore goes counter to the principle that property is to be justified only in so far as it is a true instrument of personality.

This very situation will indicate how important it is that the principle just expressed be grasped in all its rigor. On all hands the complaint is heard: If a man has *earned* his money has he not a *right* to it? Waiving for a moment the argument that much of what is claimed to be earned is in fact unearned, the answer is decisive: Property, even earned property, has no rights *a priori*. If we are correct in our statement of the fundamental justification of prop-

erty, property has its right to exist only as it serves the true ends of personality. Precisely then in so far as it goes counter to those ends it ceases of its right. Whether, therefore, property be earned or unearned, the deeper question remains as to its relation to human welfare. Where that relation is distinctly inimical, as in the case of income beyond needs, the right lies with the Social Will to effect its lawful transfer.

This right of society to alienate even earned property is the more evident when it is remembered that "earning" is a term wholly relative to social organization. The very possibility of earning depends upon the maintenance of the public peace, upon roads, streets, public sanitation, law, etc. In modern states it depends, too, upon a widely diffused educational system. In addition to this, the so-called "earner" earns by reason of access to a vast social inheritance—the commercial and industrial principles of organization, the prevalent ideas of life and the world, the mechanical and social devices, the sciences and cultures. To hold that *he* earns, of his own unaided strength, is the height of the preposterous. Society gives; and if, in its wisdom, society takes away, it is for the individual to acquiesce in an ordering of life that of necessity passes beyond the narrowly centered desires of the single life.

IV.

An equal, if not a greater concern of the organized Social Will, however, is with surplus property for control. The reason for this is that property for control has wide and usually quite unconsidered effect upon lives beyond the individual who controls. The owner of shares in a coal mine, for example, has so much mastery over the lives of employees and of consuming public. He may be a perfectly frugal administrator of his property for use; that is, he may be a respectable, law-abiding, God-fearing private citizen; yet either by reason of his unconcern, or ignorance, or poor social insight, he may so administer his property for control as to make wretched the lives of thousands of

workers. The situation is the more serious in that most property for control is held in such a way as to make effective direction of control on the part of the individual owner impossible. The "widows and orphans" and the small "savers" who own shares in various industrial enterprises delegate their power to men whom they do not know and of whose policies they have not the remotest conception. Their power of control is to them represented by what comes out of the concern in the way of dividends; not by what goes into it in the way of social insight and humane consideration.

Such control therefore is fraught with grave danger to personality precisely in so far as it is irresponsible. Obviously the function of the social order in this case is to organize devices whereby economic mastery may be shorn of its power to injure life. I need not here recount the various ways, governmental and otherwise, in which society is attempting to do this—through labor organizations, wage legislation, laws governing combinations, disability insurance, sanitary regulations, social ownership of economic enterprises, social control of public services. Our interest is here wholly in the principle which justifies this procedure—the principle that property is justified only in so far as it serves personality; and that any type of mastery which threatens personal welfare must accordingly be subjected to rigorous correction and control.

V.

The third form of surplus property is property for benevolence. A society in which all the problems of maladjustment and maldirection of life were solved or collectively provided for would obviously stand in no need of private surpluses devoted to benevolence. Such a perfect social order, however, will doubtless not soon, if ever, be realized. It follows, then, that while, as society grows in socializing power, maladjustment will be increasingly corrected and mischance provided against, there will always remain a wavering "border line" of unfortunate situations. The

very fact that society is a growing order of life means that with each stage of growth new problems disclose themselves which need time for their solution.

A sound society therefore will require of its members, as a part of their normal citizen-obligation, the setting aside of a proportion of their incomes for social relief. As society grows more complex, the funds thus set aside will be more and more socialized in organization and operation. In a simple society the direct giving to the distressed person is the normally successful mode of action. In a complex society, direct giving becomes less and less possible. The causes of mischance—tuberculosis, accident, unemployment, child labor, etc.,—ramify so widely that they can be attacked successfully only through large social means. Hence the growing need in modern society for the “pooling” of individual relief resources, for the gathering of permanent “funds” which may be applied widely and thoroughly to the correction of distressful situations.

VI.

(2) So much for property in excess of needs. We turn now to the obligations of the social order with regard to property which is below the level of needs. It is obvious, since property is assumed to be an indispensable instrument of personality, that a sound society must take full precaution against the loss to any of its members of such an indispensable instrument. To a certain extent indeed a sound society will require of its members that they build for themselves bulwarks against economic disaster. Yet there are certain eventualities against which individuals are really powerless to guard. A workman who is the support of a family is smitten with tuberculosis. He is ordered to cease work, to eat nourishing food, to remove to a more suitable climate. The property which is here an indispensable instrument not only to the man's personality but to his life is in a double sense lacking, by reason (1) of his small wage; and (2) of his enforced idleness. A sound society is obligated in some manner to guard

such a citizen against so debilitating a depletion of property power. It is a significant commentary upon our present social economy that a conclusion such as this, which is so patent that it scarce needs mention, is, in our practical social arrangements almost wholly unconsidered. It indicates how woefully our social mechanics lag behind our social theoretics; and it causes us to look with some dubious discontent upon those institutions of "government" and "law" as well as of "business" to whose semi-archaic structure and processes we must still perforce subject ourselves. Again, a workman is shorn of his limbs and so reduced to economic helplessness. A sound society will not contemplate with any complacency that such a man may, through some technicality of legal procedure, be left for a life-time without support. Here again is an eventuality against which the individual, by his own unaided power, could have taken no adequate precaution. In all such cases the resultant burden should in whole or part be socially borne.

In these two cases a new principle discloses itself which tends to modify the rigor of one of the statements made above. Access to property is justified not only on the ground that it is earned, but more fundamentally on the ground that it is *needed*. A tuberculous man has a fundamental need for which there is in him no adequate earning power. In the absence of earning power the presence of the need itself justifies the access to property-right.

If we accept this view, a whole vista of social obligations opens before us. Wherever *fundamental needs* exist a sound society is obligated to guarantee the security of those needs, provided they are not attainable through individual effort. Most fundamental of all needs for adult life is access to productive labor, which is itself access to a form of property-right. If employment is in many cases not possible, the obligation is upon society to devise means whereby unemployment or the effects of unemployment may be made impossible. In the question how this is to be done—whether by unemployment insurance or public

labor bureaus or public ownership—we are not at present interested. It is the principle involved which concerns us, the principle that access to employment (property-power) is an indispensable need and must in a sound society be adequately met. If the point is raised that employment is best left to individual initiative, the answer is easily forthcoming that unemployment is in large measure not within individual control. It is therefore, like serious disease or accident, one of the eventualities against which society, by social insurance or otherwise, must guard the individual.

This principle of “socializing burdens”¹ is therefore seen to be imperative in a thoroughly moralized society. Obviously it goes directly counter to that long regnant principle that property power shall not accrue to the individual save through his own economic efforts or through individual gift or bequest.

But so likewise, the principle of “socializing advantages” is imperative, advantages, that is, that are normally beyond the power of individual attainment. An essential need of life is such a training of mind and body as fits the individual for fullest participation in the work of his kind. A rudimentary training might well be secured by the resources of the individual; but obviously no educational guidance commensurate with the full possibilities of human life could thus be obtained. Here again, the individual access to property is too limited to fulfill the fundamental need, and the obligation is upon the social order, through its wider co-operative resources, to realize the need.

Such an access, be it noted, is simply another form of property power. The individual who has access to educational equipment and guidance from childhood through the university years has an opportunity equivalent to thousands of dollars of private property power. In this sense the socialization of advantages (as well as of burdens) while not overtly, is in fact an addition to the income

¹ Patten, S. N.: *The New Basis of Civilization*, Chap. IV. (Macmillan).

power of the individual. This fact must be remembered when the project (usually so hastily misconceived) to equalize incomes is broached. To socialize an advantage, like education or recreation, is by just so much to equalize incomes. The more fully therefore a society has organized itself in co-operative burden-bearing and advantage-rendering, by precisely so much has it advanced toward the equalization of incomes. It is not difficult to see also that as the fundamental needs are increasingly socialized, the actual money income of the individual becomes of less and less real importance.

We have mentioned but one advantage-need capable of socialization; but the reader will readily call up a host of others. Passing from the ordinary socialized advantages of streets and sewers and public lights, postal service, health inspection, policing, etc.—advantages which unaided individuals cannot secure—we note the more recent additions to the list of socialized advantages in recreation and culture facilities. For most men a private park or golf links or even a tennis court is out of the question, while the possession of a great orchestra or laboratory or art gallery is something to be dreamed of but not realized. All these however represent fundamental recreational and cultural needs, as indispensable in their way to a fully equipped life as food or shelter. In the case of these, as of education, modern society is noting its essential obligation and is providing access as full and free as if the individuals granted the privilege were in effect possessed of incomes commensurate with the advantages they receive. Hence in these cases, as in the case of disasters, where there is the essential income-need, there is increasing recognition on the part of civilized society that such income-need must be adequately and ungrudgingly met. The right of every fundamental life-need to fulfilment, in short, is coming to be recognized as absolute; and the social order is condemned when, either from indifference or perverseness, it permits a single such need to go unrealized.

Summing up the analysis then, we may say that with respect to property a twofold obligation rests upon society: First, to detect the degree of intrinsic right to property on the part of individuals; second, to detect the degree of benefit or injury wrought by certain conditions of property ownership. We have confined ourselves in this paper wholly to the second, apparently more fruitful obligation. In pursuing our analysis, we have found the specific obligations of society to be fourfold: First, to guard against surplus property for use; second, to guard against the misdirection of surplus property for control; third, to socialize such casualties as the individual cannot normally provide against; fourth, to socialize such fundamental advantages as the individual cannot unaided achieve.

The analysis leaves us with private property as a fundamental institution, but with private property so linked with social purpose and social operation as to be indeed far removed from the crass individualism of the long regnant conception.

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